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**DEC 11 2006**

**OFFICE OF PETITIONS**

In re Application of :  
McClary et al. : DECISION ON PETITION  
Application No. 10/602,461 :  
Filed: June 23, 2003 :  
Attorney Docket No. 4906P114 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.81(a)" filed September 25, 2006 and resubmitted October 25, 2006.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed February 1, 2006. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply considered received and no extension obtained, the above-identified application became abandoned on May 2, 2006. A Notice of Abandonment was mailed on September 28, 2006.

Prior to the Notice of Abandonment being mailed, on September 25, 2006, applicants filed a petition to have their response considered timely filed pursuant to 37 CFR 1.8(b). After the mailing of the Notice, applicants resubmitted the petition. Petitioner requests withdrawal of the holding of abandonment on the basis that the reply was timely filed with a certificate of mailing dated March 22, 2006. In support thereof, petitioner submits a copy of the response as filed, including a certificate of mailing and a Statement of Attestation under 37 CFR 1.8(b)(3) by Melissa Stead, the individual responsible for mailing the reply.

37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

On instant petition, petitioner has satisfied the requirements of §1.8(b) to have the response considered timely filed by virtue of the certificate of mailing dated March 22, 2006.

Accordingly, the Notice of Abandonment mailed September 28, 2006 is hereby VACATED, and the holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 2116 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the response to the Office action resubmitted on petition filed October 25, 2006.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



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